IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.8390 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VRUNDABEN JASHWANTRAI RAGE

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 8390 of 2003

MR RS SANJANWALA for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent Nos. 1-2

HL PATEL ADVOCATES for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 08/07/2004

ORAL JUDGEMENT

Leave to amend as per the draft amendment. The petitioner to carry out the amendment latest by tomorrow i.e. 09-07-2004.

2. RULE. Mr.Nagesh Sood, learned A.G.P., waives

service of rule on behalf of respondent Nos.1 and 2 and Mr.Pandya, learned advocate, waives service of rule on behalf of respondent No.3. With the consent of the parties, the matter is taken up for final hearing today.

3. What is challenged in the present petition is the order passed by the respondent No.2 revisional authority dated 19-05-2003 by which the revisional authority has remanded the matter to the Taluka Development Officer, Valsad by quashing and setting aside the order passed by the Taluka Development Officer, Valsad dated 11-05-2001 by which the N.A. Permission was granted in favour of the petitioner.

4. During the pendency of the present petition the Taluka Development Officer, Valsad, pursuant to the order dated 19-05-2003 passed by respondent No.2 revisional authority, passed a fresh order dated 09-01-2004 whereby he has refused the N.A. Permission in favour of the petitioner. By way of amendment the petitioner has challenged the order dated 09-01-2004 passed by the Taluka Development Officer, Valsad.

5. So far as challenging the order dated 19-05-2003 passed by respondent No.2 revisional authority is concerned, in view of the order dated 09-01-2004 passed by the Taluka Development Officer, Valsad, the said prayer does not survive as the has become infructuous by now as the order passed by the revisional authority dated 19-05-2004 is implemented.

6. So far as challenging the order passed by the Taluka Development Officer, Valsad dated 09-01-2004 is concerned, Mr.Sanjanwala, learned Senior Counsel appearing on behalf of the petitioner, has submitted that before passing the impugned order dated 09-01-2004 passed by the Taluka Development Officer, Valsad no opportunity of hearing was given to the petitioner and N.A. Permission has been refused without giving any notice.

7. Mr.Pandya, learned advocate appearing on behalf of respondent No.3 - Taluka Development Officer, is not in a position to support the order passed by the Taluka Development Officer, Valsad dated 09-01-2004 with regard to opportunity of hearing given to the petitioner.

8. Heard the learned advocates for the respective parties. When the Taluka Development Officer, Valsad has refused N.A. Permission which was granted in favour of the petitioner it has incumbent upon the Taluka Development Officer, Valsad to give an opportunity of

being heard to the petitioner to put forward his case. Refusing of N.A. Permission is having a civil consequence. If the order which was passed in favour of the petitioner is set aside i.e. N.A. Permission is refused then the Taluka Development Officer ought to have given notice to the petitioner before passing the order dated 09-01-2004. As no opportunity of hearing is given to the petitioner, the present petition is required to be allowed on that ground alone.

9. Under the circumstances, the impugned order dated 09-01-2004 passed by the Taluka Development Officer, Valsad refusing the N.A. Permission in favour of the petitioner is hereby quashed and set aside. The Taluka Development Officer, Valsad is directed to decide the same afresh with regard to grant of N.A. Permission to the petitioner after giving an opportunity of hearing and pass a detailed speaking order on merits without being influenced by the order dated 19-05-2003 passed by learned Special Secretary (Appeals), Government of Gujarat, which has challenged in the present petition. It will be open to the petitioner to raise all contentions available to him.

10. Rule is made absolute accordingly. No order as to costs.

Sd/-

[ M.R.SHAH, J ]

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'Bhavesh'